



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
केंद्रीय जीएसटी अपील आयुक्तालय - अहमदाबाद
Central GST Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



☎ 26305065-079 :

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DIN-20220764SW0000520081

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/CEXP/720/2021 /2854 - 2858
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-039/2022-23**
दिनांक Date : 13.07.2022 जारी करने की तारीख Date of Issue : 29.07.2022.
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Letter F. No.DIV-III/Refund/Shri Ram/20-21 dated 29.06.2021
issued by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South
Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

Shri Mafatlal Harakhchand Shah,
78/80, 2nd Floor, Ghandi Building,
C.P. Tank Road,
Mumbai-400 004.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contained in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

This appeal has been filed by Shri Mafatlal Harakhchand Shah, 78/80, 2nd Floor, Ghandi Building, C.P. Tank Road, Mumbai-400 004 [hereinafter referred to as “*appellant*”] against Letter F.No.Div-III/Refund/Shri Ram/20-21 dated 29.06.2021 [hereinafter referred to as “*impugned letter*”] issued by the Assistant Commissioner, Central GST, Division-III, Ahmedabad South [hereinafter referred to as “*issuing authority*”] rejecting a refund claim for Rs.14,40,498/- filed by him.

2. Briefly stated, the facts of the case are that based on an investigation conducted by the DGCEI against M/s Shree Tubes Pvt. Ltd., Ahmedabad, a Show Cause Notice (in short ‘SCN’) F.No.DGCEI/AZU/12(4)40/2006-07 dated 26.10.2007 was issued against them proposing demand of central excise duty along with interest and penalties and also proposing penalties on the Directors of M/s Shree Ram Tubes Pvt. Ltd. among which the appellant was also a noticee being a Director of the said firm. The said SCN was adjudicated by the Commissioner of Central Excise, Ahmedabad-I vide Order-in-Original No.3/ Commissioner/RKS/AHD-I/2010 dated 03.02.2010, wherein he had confirmed the proposals in the SCN and imposed a penalty of Rs.2,50,00,000/- on the appellant. Being aggrieved by the order, the appellant had filed an appeal before the Hon’ble CESTAT, Ahmedabad. During the pendency of the appeal before the CESTAT, the department had initiated action for recovery of the confirmed dues from the appellant consequent to which an amount of Rs.14,40,497.60 was recovered directly from the Savings and Fixed Deposit Accounts of the appellant maintained at Bank of Baroda, vide a Pay Order for the said amount issued by the said Bank vide their Letter No.GULALW/2016-17/OPS dated 02.02.2017 as per directions received from the department.

2.1 During the pendency of appeals filed before the Hon’ble CESTAT against the above said OIO dated 03.02.2010, the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short ‘*SVLDRS*’) came to be announced by the Government of India. The main noticee, M/s Shree Ram Tubes Pvt. Ltd. and the co-noticees in the case, including the appellant, opted for settlement of the dispute in the case under the said Scheme, SVLDRS, and they were issued a Discharge Certificate in Form No.SVLDRS-4 for full and final settlement of tax dues in the case.

2.2 Subsequently, the appellant had made an application dated 29.06.2020 requesting for returning of the amount of Rs.14,40,497.60 which had been recovered by the department from the Bank Accounts of the appellant. The appellant has stated that the said amount was neither a pre-deposit nor any deposit paid by the appellant in relation to the Order-in-Original dated 03.02.2010 but it was an amount that had been arbitrarily, coercively and illegally recovered from his Bank Accounts by the department during the pendency of the stay order. The above application for refund was followed up by the appellant by different



letters, the last among them being letter dated 29.05.2021 addressed to the Principal Commissioner, CGST & Central Excise, Ahmedabad South.

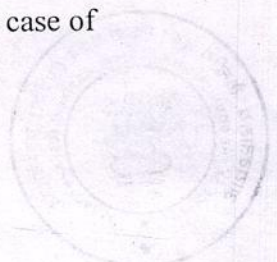
2.3 The issuing authority vide the impugned letter, which was in reply to the appellant's letter dated 29.05.2021 addressed to the Principal Commissioner, rejected the claim for refund on the grounds that (i) no supporting documentary evidence were submitted along with the above letter dated 29.05.2021; (ii) the amount for which refund is claimed was recovered on 02.02.2017 under Section 11 of Central Excise Act, 1944 against penalty of Rs.2.5 Crores imposed upon the Director of the Company and it is seen that against the said recovery, no recourse to the appropriate Appeal proceedings under Section 35 of the Central Excise Act, 1944 have been taken; and (iii) In the declaration filed under the SVLDRS, the amount of Rs.14,40,497.60 was also declared as pre-deposit made during the pending proceedings and hence with the issuance of SVLDRS-4, the matter has attained finality and no further action can be initiated in the matter.

3. Being aggrieved with the impugned letter, the appellant has filed the instant appeal making detailed submissions on merits. They have also contended that the issuing authority has arbitrarily rejected the refund claim, without considering any of the submissions made by the appellant and without issuing any show cause notice or without granting any opportunity of personal hearing to the appellant. Thus, the impugned communication is *ex-facie* bad in law in as much as the same has been arbitrarily issued without considering the facts of the case and violating the principles of natural justice. The appellant has relied on the judgement of Hon'ble High Court of Bombay in the case of General Mills India Pvt. Ltd. Vs. Union of India [2015 (322) ELT 95 (Bom.)] in support of their contention.

4. Personal hearing in the matter was held on 18.01.2022 through virtual mode. Shri Anil Gidwani, Advocate, appeared on behalf of the appellant. He re-iterated submissions made in the appeal memorandum.

5. I have gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as oral submissions made during the hearing. I find that the appellant have contested the issue on merit as well as raising the grounds of violation of the principles of natural justice.

6. On perusal of records, I find that the contention raised by the appellant regarding non-adhering to the principles of natural justice is correct. In the instant case, I find that notice for rejecting the claim was not issued to the appellant before adjudicating of the case. It is settled legal position that rejection of refund claim without issuance of show cause notice cannot sustain in law. The Hon'ble Tribunal, Chennai in their decision in the case of



M/s ITC Ltd. Vs. Commissioner of GST & Central Excise, Salem [2018(9) TMI 1590 – CESTAT Chennai] has held that:

“a notice is a right of the party to enable him to know the grounds for rejection of the refund claim so as to arm himself to defend the case. It is the foundation of any lis in taxation proceedings.”

Apart from that, before rejecting the refund claim in question, no fair or proper opportunity of hearing was granted to the appellant. In terms of Section 33A of the Central Excise Act, 1944, the Respondent was duty bound to grant fair and proper opportunity of personal hearing to the appellant. In the instant case, it is clearly evident that the issuing authority has not given any such fair opportunity to the appellant. The impugned decision is, therefore, passed in clear violation of principles of natural justice and is against the settled principle of ‘audi alteram partem’. The Hon’ble Supreme Court in the case of Uma Nath Pandey Vs. State of UP [2009 (3) TMI 526 – Supreme Court = 2009 (237) E.L.T. 241 (S.C.)] has held that:

“Natural justice is essence of fair adjudication and to be ranked as fundamental. Purpose of following principle of natural justice is to prevent miscarriage of justice. Notice and hearing required as principle of natural justice.”

6.1 Further, the Hon’ble High Court of Madras had in the case of PNP Polytex Pvt. Ltd. Vs. Asstt. Commr. of Cus. (Refund), Chennai [2018 (360) ELT964 (Mad.)] had held that :

“6. Firstly, the proceedings were communicated to the incorrect address. The petitioner had no notice of the proceedings. Apart from that, before rejecting the petitioner’s claim, it appears that no notice of hearing was issued to the petitioner. Though the statute does not mandate an opportunity of personal hearing, as the impugned order rejecting the petitioner’s claim results in civil consequences, principles of natural justice have to be read into the provisions and the petitioner should have been afforded an opportunity, as the impugned order is an order of adjudication. Therefore, on the said ground, the impugned order calls for interference.”

6.2 Similarly, in the case of Vasta Bio-Tech Pvt. Ltd V. Assistant Commissioner of Customs, Chennai [2018 (360) ELT 234 (Mad.)], the Hon’ble High Court of Madras had held that :

“5. The petitioner’s case is that, had a show cause notice been issued to them, they would have explained to the Authority, as regards the discrepancies between the imported goods and the sale invoice, and would have extended full cooperation, and to the said effect, the reply affidavit has been filed to justify their stand. Since the partial rejection of the petitioner’s claim for refund results in civil consequence, the principles of natural justice demands that the petitioner be afforded an opportunity. The explanation sought to be given by the respondent, in Para No. 10 of the counter affidavit cannot be countenanced, as the statute does not put a bar for an opportunity



